

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

CHARLES FIELDS,

Plaintiff,

v.

DAN LESATZ, *et al.*,

Defendants.

Case No. 2:14-CV-67

HON. GORDON J. QUIST

ORDER ADOPTING REPORT AND RECOMMENDATION

On July 9, 2015, Magistrate Judge Timothy P. Greeley issued a Report and Recommendation (R & R) recommending that the Court deny Defendants' motion for summary judgment. Both parties have filed objections to the R & R, which the Court has reviewed de novo. For the reasons that follow, the Court will overrule the objections and adopt the R & R.

Defendants' Objections

The magistrate judge concluded that Defendants failed to satisfy their burden of demonstrating that Plaintiff failed to exhaust his administrative remedies because they failed to explain which claims were unexhausted. Rather, the magistrate judge explained, Defendants simply acknowledged that some claims were exhausted and glossed over their argument as to which allegations were unexhausted. Defendants have objected to the magistrate judge's conclusion, arguing that they sufficiently demonstrated that Plaintiff failed to exhaust the majority of his claims.

Having reviewed Defendants' brief in support of their motion for summary judgment, as well as their objections, the Court cannot decipher which claims Defendants believe are unexhausted. For instance, in their objections, Defendants describe Plaintiff's claim that he told Defendant

Sprader that another prisoner had threatened him, and that the prisoner subsequently threw hot liquids in Plaintiff's face. Defendant do not list this claim as one they believe was exhausted, but they also do not argue that it was unexhausted.

Defendants bear the burden of demonstrating failure to exhaust. In this case, Defendants' briefing has been unclear and, at some points, inaccurate. Accordingly, the Court agrees with the magistrate judge that Defendants have failed to meet their burden.

Plaintiff's Objections

Plaintiff argues that the R & R fails to accurately describe Plaintiff's claims. Because the Court has concluded that Defendants' motion for summary judgment should be denied in its entirety, it need not address Plaintiff's argument that his complaint contains claims in addition to those described in the R & R.

Therefore,

IT IS HEREBY ORDERED that the July 9, 2015 Report and Recommendation (dkt. #41) is **ADOPTED** as the Opinion of the Court.

IT IS FURTHER ORDERED that the objections to the Report and Recommendation (dkt. ##46, 48) are **OVERRULED**.

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment (dkt. #26) is **DENIED**.

Dated: September 2, 2015

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE